U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIXIE L. BOOTH and U.S. POSTAL SERVICE,
POST OFFICE, Akron, OH

Docket No. 00-1200; Submitted on the Record;
Issued May 7, 2001

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant sustained an emotional condition in the performance of duty, as alleged.

On November 17, 1997 appellant, then a 61-year-old distribution/window clerk, filed an occupational disease claim, Form CA-2, alleging that she sustained stress at work to the point where she must stay at home alone, could not mow her grass "or do much of anything" and she cried a lot. Her allegations included that as a box clerk, from 1990 to 1997, her work increased from 710 to 1154 boxes. Appellant stated that she "begged, pleaded, [wrote] letters asking for help," but did not receive assistance. She also stated that while she was off work, one of the managers called her and stated that if she did not return to work, he would put her job up for bid. Appellant stated that when a coworker, "Yvonne," asked her if she could get help and she asked another coworker to help Yvonne, the supervisor, Bruce Cocklin, told her very sharply, "[y]ou put your drawer down and help her." Appellant stated that the postal nurse, Cindy Hayes, started calling her after her August 21, 1997 shoulder injury when she was out of work apparently to verify that she was truly injured and Ms. Hayes met her when she went to her doctors' appointments. She also stated that the male clerks, Steve Collier and Leo Kreyenbuhl, were favored over the female clerks as they were allowed to leave early on annual leave to go to ball games or "just because it was a beautiful day" and they were seldom put on the window. Appellant stated that on June 2, 1997 when her leg was bothering her and she wanted to go home, the supervisor, Martha Dalton, did not release her to go home. She also stated that the supervisor, Mr. Cocklin, would not get change when she asked him. Appellant alleged that Mr. Kreyenbuhl was not reprimanded for his actions in 1992 and 1994.

By letter dated January 6, 1998, the Office of Workers' Compensation Programs requested additional information from appellant, including evidence to support her allegations of harassment and discrimination by management.

By letter dated February 20, 1998, Mr. Cocklin, the then postmaster, stated that in December 1993 a clerk was assigned to assist appellant in the distribution of trays and tubs with

the morning dispatch, and assistance and added hours were given to her at other times. He stated that corrective action regarding Mr. Kreyenbuhl was determined at a Step 2 decision by another postmaster and the decision to accompany appellant during her doctor's visit was made by "Injury Compensation," Ms. Hayes.

In the statement of accepted facts dated May 1, 1998, the Office determined that appellant's working in the box section, distributing mail and working the window, often alone, was a compensable factor of employment. The Office stated that appellant "was upset because her employing establishment was checking up on her when she was off work in August and September 1977" and an "employing establishment's employee accompanied [her] to doctor's appointments." The Office found that this and other incidents were not compensable factors of employment. Further, the Office found that appellant's allegations that Mr. Cocklin did not obtain change and that her coworkers, Mr. Collier and Mr. Kreyenbuhl, received preferential treatment were not established as factual.

By decision dated June 10, 1998, the Office denied the claim, stating that the evidence of record failed to establish that the claimed medical condition and disability were causally related to the accepted factor of employment. The Office stated that in August and September 1997 Ms. Hayes from the employing establishment accompanied appellant to doctor's appointments when she was off work and that this was an administrative function of the employing establishment, not a compensable factor of appellant's employment duties. The Office stated that appellant did not present any evidence, beyond her dislike of the situation, to prove that the employing establishment was in error or was abusive regarding that incident.

On June 30, 1998 appellant requested an oral hearing before an Office hearing representative, which was held on September 22, 1999. At the hearing appellant described the stress she experienced from the increase in her work load and the medical treatment she received for her emotional condition and physical injuries she sustained at work. Appellant stated that she stopped working in September 1997 due to her stress and physical injuries.

Appellant submitted medical evidence including a report from her treating physician, Dr. B. Andrew Farah, a psychiatrist, dated October 18, 1999. In his report, Dr. Farah noted that appellant had psychiatric difficulties in the past, which were a result of a postpartum depression and he did not believe they related to her current psychiatric difficulties. He diagnosed severe, major depression with severe suicidal thinking. Dr. Farah opined that her psychiatric diagnosis was directly related to her history of multiple injuries on the job and to the fact that she was simply overworked when she needed to take a break. He stated that appellant literally begged for help and despite her best effort, she was physically and emotionally unable to return to work.

By decision dated December 30, 1999, the Office hearing representative affirmed the Office's June 10, 1998 decision.

The Board finds that this case is not in posture for decision.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the

concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[1] On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.[2]

To the extent that disputes and incidents alleged as constituting harassment by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[3] However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.[4]

Appellant did not present evidence to corroborate that Mr. Cocklin did not obtain change when she asked him and that her coworkers, Mr. Collier and Mr. Kreyenbuhl, were given preferential treatment as in not being placed at the window. Appellant, therefore, did not show that management harassed her in that way. Further, regarding Mr. Cocklin's contacting her while she was recovering from an injury and informing her that she must come back to work or else her job would be put up for bid and Mr. Kreyenbuhl's not being reprimanded in 1992 and 1994, these are administrative or personnel matters and as such do no constitute compensable factors unless management has acted unreasonably.[5] This showing has not been made. Moreover, the employing establishment stated, without going into detail, that corrective action had been taken against Mr. Kreyenbuhl in a Step 2 decision by another postmaster. Regarding Ms. Dalton's denying appellant leave, this also constitutes as administrative matters and appellant has not shown management acted unreasonably.[6] Regarding Mr. Cocklin's speaking "very sharply" to her when telling her to help another employee, this is an administrative matter and appellant has not shown that Mr. Cocklin acted abusively or unreasonably and has not established a compensable factor of employment.[7]

The Office erred, however, in summarily determining that appellant being escorted to the doctor by the nurse, Ms. Hayes, on her time off from work without her consent or permission was an administrative matter within management's discretion. The Office erred in failing to investigate the reasons for the employing establishment's arranging for a nurse to accompany appellant to her physician under these circumstances. The Office should have requested the

[1] 5 U.S.C. §§ 8101-8193.

[2] *Clara T. Norga*, 46 ECAB 473, 480 (1995); *see Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

[3] *Clara T. Noga*, *supra* note 2 at 481; *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

[4] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[5] *See Mary L. Brooks*, 46 ECAB 266, 273-74 (1994); *Frederick D. Richardson*, 45 ECAB 454, 463 (1994).

[6] *See Dondal E. Ewals* 45 ECAB 111, 124 (1993).

[7] *See Abe E. Scott*, 45 ECAB 164, 171 (1993); *Jack Hopkins, Jr., supra* note 4.

employing establishment to provide reasons for its intrusion into appellant's private life in this manner.[8] If the employing establishment arranged for the escort because it suspected her of fraud or abuse of the workers' compensation system, the Office should inquire as to why this matter was not referred to an appropriate investigative body such as the Inspector General's Office of the Postal Inspector's Office. If the employing establishment negotiated a right to have appellant escorted by a nurse during visits to her physician through a union contract, then the Office should acquire a copy of the same. After further investigation, the Office should determine whether the employing establishment's act of directing an intrusion into appellant's life by having a nurse accompany her to a physical examination without her consent when she was off duty constituted an administrative managerial matter within the discretion of the employing establishment or abuse of the employing establishment's discretionary management authority. The Office should provide full rationale for its determination regarding this employment factor alleged by appellant to have contributed to her emotional condition. Following this and any necessary further development, the Office shall issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated December 30, 1999 is vacated and the case remanded for further action consistent with this opinion.

Dated, Washington, DC
May 7, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

[8] It is well established that proceedings under the Act are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence. The Office has an obligation to see that justice is done. *Dennis J. Lasanen*, 43 ECAB 549, 550 (1992); *Robert A. Redmond*, 40 ECAB 796 (1989).